

**ASSEMBLY BILL**

**No. 2272**

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**Introduced by Assembly Member Cogdill**

February 20, 2002

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An act to amend Sections 11379.6, 11379.7, 11383, and 11644 of the Health and Safety Code, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

AB 2272, as introduced, Cogdill. Controlled substances: unlawful manufacture.

(1) Existing law makes it a felony punishable by 3, 5, or 7 years in state prison and by a fine not exceeding \$50,000 to unlawfully manufacture any controlled substance.

This bill would impose this same penalty on any person who engages in the unlawful extraction, as defined, of ephedrine, pseudoephedrine, phenylpropanolamine, or their salts and isomers. The bill would also provide that if a fire occurs that can be shown, beyond a reasonable doubt, to have been caused by the unlawful manufacture of a controlled substance, any person 18 years of age or older who engaged in that unlawful manufacture or extraction process and who knew or should have known that the process causing the fire was either unsafe or illegal shall be punished by an additional 2 years in the state prison. By creating new crimes and enhancements, this bill would impose a state-mandated local program on local governments.

(2) Existing law provides that any person convicted of unlawfully manufacturing, or possessing specified precursors with the intent to manufacture, methamphetamine or phencyclidine, when the commission or attempted commission of the crime occurs in a structure

where any child under 16 years of age is present, shall be punished by an additional 2 years in the state prison.

This bill would increase the penalty for the above offense to 5 years in the state prison.

(3) Existing law provides, with specified exceptions, that it is a felony for any person, with intent to manufacture methamphetamine, to possess ephedrine or pseudoephedrine or a substance containing ephedrine or pseudoephedrine, or other specified chemicals.

This bill would provide that it shall be a rebuttable presumption that the possession of more than one pound of ephedrine or pseudoephedrine or their salts or isomers indicates an intent to manufacture methamphetamine. The bill would include persons as otherwise authorized by law within the provision's exception and would also make a clarifying change.

(4) Existing law requires the Crime Prevention Center to increase public awareness in areas such as the health dangers created by clandestine laboratories and the controlled substances they produce, including how to identify and report them, and the unusual effects and dangers of synthetic substances such as analogs of fentanyl, MPPP, phencyclidine, and methamphetamines.

This bill would make a technical, nonsubstantive change to this provision.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 11379.6 of the Health and Safety Code  
2 is amended to read:  
3 11379.6. (a) Except as otherwise provided by law, every  
4 person who manufactures, compounds, converts, produces,  
5 derives, processes, or prepares, either directly or indirectly by  
6 chemical extraction or independently by means of chemical  
7 synthesis, any controlled substance specified in Section 11054,



11055, 11056, 11057, or 11058 shall be punished by imprisonment in the state prison for three, five, or seven years and by a fine not exceeding fifty thousand dollars (\$50,000).

(b) (1) *Any person who engages in the unlawful extraction of ephedrine, pseudoephedrine, phenylpropanolamine, or their salts and isomers shall be punished by imprisonment in the state prison for three, five, or seven years and by a fine not exceeding fifty thousand dollars (\$50,000).*

(2) *For the purposes of this subdivision, ‘unlawful extraction’ shall begin when the mixture containing ephedrine, pseudoephedrine, or phenylpropanolamine is combined with a liquid solvent.*

(c) (1) Except as otherwise provided by law, every person who offers to perform an act ~~which~~ that is punishable under subdivision (a) or (b) shall be punished by imprisonment in the state prison for three, four, or five years.

(e)

(2) *If a fire occurs that can be shown, beyond a reasonable doubt, to have been caused by the unlawful manufacture of a controlled substance specified in subdivision (a) or by the unlawful extraction of a substance specified in subdivision (b), any person 18 years of age or older who engaged in that unlawful manufacture or extraction process and who knew or should have known that the process causing the fire was either unsafe or illegal shall be punished by an additional two years in the state prison.*

(d) All fines collected pursuant to subdivision (a) or (b) shall be transferred to the State Treasury for deposit in the Clandestine Drug Lab Clean-up Account, as established by Section 5 of Chapter 1295 of the Statutes of 1987. The transmission to the State Treasury shall be carried out in the same manner as fines collected for the state by the county.

SEC. 2. Section 11379.7 of the Health and Safety Code is amended to read:

11379.7. (a) Except as provided in subdivision (b), any person convicted of a violation of subdivision (a) of Section 11379.6 or Section 11383, or of an attempt to violate subdivision (a) of Section 11379.6 or Section 11383, as those sections relate to methamphetamine or phencyclidine, when the commission or attempted commission of the crime occurs in a structure where any child under 16 years of age is present, shall, in addition and

1 consecutive to the punishment prescribed for the felony of which  
2 he or she has been convicted, be punished by an additional term of  
3 ~~two~~ five years in the state prison.

4 (b) Any person convicted of a violation of subdivision (a) of  
5 Section 11379.6 or Section 11383, or of an attempt to violate  
6 subdivision (a) of Section 11379.6 or Section 11383, as those  
7 sections relate to methamphetamine or phencyclidine, where the  
8 commission of the crime causes any child under 16 years of age to  
9 suffer great bodily injury, shall, in addition and consecutive to the  
10 punishment prescribed for the felony of which he or she has been  
11 convicted, be punished by an additional term of five years in the  
12 state prison.

13 (c) As used in this section, “structure” means any house,  
14 apartment building, shop, warehouse, barn, building, vessel,  
15 railroad car, cargo container, motor vehicle, housecar, trailer,  
16 trailer coach, camper, mine, floating home, or other enclosed  
17 structure capable of holding a child and manufacturing equipment.

18 (d) As used in this section, “great bodily injury” has the same  
19 meaning as defined in Section 12022.7 of the Penal Code.

20 SEC. 3. Section 11383 of the Health and Safety Code is  
21 amended to read:

22 11383. (a) Any person who possesses both methylamine and  
23 phenyl-2-propanone (phenylacetone) at the same time with the  
24 intent to manufacture methamphetamine, or who possesses both  
25 ethylamine and phenyl-2-propanone (phenylacetone) at the same  
26 time with the intent to manufacture N-ethylamphetamine, is guilty  
27 of a felony and shall be punished by imprisonment in the state  
28 prison for two, four, or six years.

29 (b) Any person who possesses at the same time any of the  
30 following combinations, or a combination product thereof, with  
31 intent to manufacture phencyclidine (PCP) or any of its analogs  
32 specified in paragraph (22) of subdivision (d) of Section 11054 or  
33 paragraph (3) of subdivision (e) of Section 11055 is guilty of a  
34 felony and shall be punished by imprisonment in the state prison  
35 for two, four, or six years:

36 (1) Piperidine and cyclohexanone.

37 (2) Pyrrolidine and cyclohexanone.

38 (3) Morpholine and cyclohexanone.

39 (c) (1) Any person who, with intent to manufacture  
40 methamphetamine or any of its analogs specified in subdivision

(d) of Section 11055, possesses ephedrine or pseudoephedrine, or any salts, isomers, or salts of isomers of ephedrine or pseudoephedrine, or who possesses a substance containing ephedrine or pseudoephedrine, or any salts, isomers, or salts of isomers of ephedrine or pseudoephedrine, or who possesses at the same time any of the following, or a combination product thereof, is guilty of a felony and shall be punished by imprisonment in the state prison for two, four, or six years:

(A) Ephedrine, pseudoephedrine, norpseudoephedrine, N-methylephedrine, N-ethylephedrine, N-methylpseudoephedrine, N-ethylpseudoephedrine, or phenylpropanolamine, plus hydriodic acid.

(B) Ephedrine, pseudoephedrine, norpseudoephedrine, N-methylephedrine, N-ethylephedrine, N-methylpseudoephedrine, N-ethylpseudoephedrine, or phenylpropanolamine, thionyl chloride and hydrogen gas.

(C) Ephedrine, pseudoephedrine, norpseudoephedrine, N-methylephedrine, N-ethylephedrine, N-methylpseudoephedrine, N-ethylpseudoephedrine, or phenylpropanolamine, plus phosphorus pentachloride and hydrogen gas.

(D) Ephedrine, pseudoephedrine, norpseudoephedrine, N-methylephedrine, N-ethylephedrine, N-methylpseudoephedrine, N-ethylpseudoephedrine, chloroephedrine and chloropseudoephedrine, or phenylpropanolamine, plus any “reducing” agent.

(2) Any person who, with intent to manufacture methamphetamine or any of its analogs specified in subdivision (d) of Section 11055, possesses hydriodic acid or any product containing hydriodic acid is guilty of a felony and shall be punished by imprisonment in the state prison for two, four, or six years.

(3) *It shall be a rebuttable presumption that the possession of more than one pound of ephedrine or pseudoephedrine, or any salts, isomers, or salts of isomers of ephedrine or pseudoephedrine, indicates an intent to manufacture methamphetamine or any of its analogs specified in subdivision (d) of Section 11055.*

(d) (1) For purposes of this section, “reducing” means a chemical reaction in which a hydrogen combines with another

1 ~~substance atom is added to an organic compound or in which an~~  
2 ~~oxygen atom is removed from a substance an organic compound.~~

3 (2) For purposes of this section, “a reducing agent” means an  
4 agent that causes reduction to occur by either donating a hydrogen  
5 atom to an organic compound or by removing an oxygen atom from  
6 an organic compound.

7 (e) For purposes of this section, possession of the optical,  
8 positional, or geometric isomer of any of the compounds listed in  
9 this section shall be deemed to be possession of the derivative  
10 substance.

11 (f) For purposes of this section, possession of immediate  
12 precursors sufficient for the manufacture of methylamine,  
13 ethylamine, phenyl-2-propanone, piperidine, cyclohexanone,  
14 pyrrolidine, morpholine, ephedrine, pseudoephedrine,  
15 norpseudoephedrine, N-methylephedrine, N-ethylephedrine,  
16 phenylpropanolamine, hydriodic acid, thionyl chloride, or  
17 phosphorus pentachloride shall be deemed to be possession of the  
18 derivative substance. Additionally, possession of essential  
19 chemicals sufficient to manufacture hydriodic acid, with intent to  
20 manufacture methamphetamine, shall be deemed to be possession  
21 of hydriodic acid. Additionally, possession of any compound or  
22 mixture containing piperidine, cyclohexanone, pyrrolidine, or  
23 morpholine ephedrine, pseudoephedrine, norpseudoephedrine,  
24 N-methylephedrine, N-ethylephedrine, phenylpropanolamine,  
25 hydriodic acid, thionyl chloride, or phosphorus pentachloride  
26 shall be deemed to be possession of the substance.

27 (g) Subdivisions (a), (b), (c), (e), and (f) do not apply to drug  
28 manufacturers licensed by this state or persons authorized by  
29 regulation of the Board of Pharmacy to possess those substances  
30 or combinations of substances, *or persons as otherwise authorized*  
31 *by law.*

32 SEC. 4. Section 11644 of the Health and Safety Code is  
33 amended to read:

34 11644. To the extent moneys are available therefor, the Crime  
35 Prevention Center of the Department of Justice shall prepare and  
36 disseminate informational materials on the unique dangers posed  
37 by clandestine laboratories and the controlled substances they  
38 produce. The Crime Prevention Center shall increase public  
39 awareness in areas such as the health dangers created by the  
40 laboratories themselves, including how to identify and report

1 them, and the unusual effects and dangers of synthetic substances  
2 ~~such as~~ *including, but not limited to*, analogs of fentanyl, MPPP,  
3 phencyclidine, and methamphetamines.

4 SEC. 5. No reimbursement is required by this act pursuant to  
5 Section 6 of Article XIII B of the California Constitution because  
6 the only costs that may be incurred by a local agency or school  
7 district will be incurred because this act creates a new crime or  
8 infraction, eliminates a crime or infraction, or changes the penalty  
9 for a crime or infraction, within the meaning of Section 17556 of  
10 the Government Code, or changes the definition of a crime within  
11 the meaning of Section 6 of Article XIII B of the California  
12 Constitution.

